



**MCI Telecommunications  
Corporation**

1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

ORIGINAL

March 1, 1996

Mr. William F. Caton  
Secretary  
Federal communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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**RE: In the Matter of 1996 Annual Access Tariff Filing, CC Docket No. 87-313 and DA 96-28; and Treatment of Video Dialtone Service Under Price Cap Regulation, CC Docket No. 94-1**

Dear Mr. Caton:

Enclosed herewith for filing are the original and five (5) copies of MCI Telecommunications Corporation's Comments regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Comments furnished for such purpose and remit same to the bearer.

Sincerely,

Lawrence Fenster  
Senior Regulatory Analyst

Enclosure

No. of Copies rec'd 075  
List A B C D E



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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<b>In the Matter of</b>	)	
<b>1996 Annual Access Tariff Filing</b>	)	<b>CC Docket No. 87-313</b>
	)	<b>DA 96-28</b>
<b>Treatment of Video Dialtone Service</b>	)	
<b>Under Price Cap Regulation</b>	)	<b>CC Docket No. 94-1</b>

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**MCI COMMENTS**

**I. Introduction**

Bell Atlantic has petitioned the Commission to waive its requirement that Bell Atlantic establish a separate price cap basket for Bell Atlantic's Video Dialtone Service offering in Dover Township. Bell Atlantic contends that the Telecommunications Act of 1996 (1996 Act) invalidates video dialtone regulation *in toto*. Consequently, it contends the Commission's separate price cap basket requirement for video dialtone service is invalid. Nevertheless, Bell Atlantic requests a waiver from this requirement since it also contends that: a) it is not able to calculate either its Price Cap Index (PCI) or its Actual Price Index (API) for its video dialtone service; and b) the Order mandating a separate price cap basket "is subject to a requirement that the size of the video dialtone service offering exceed a *de minimis* threshold level."<sup>1</sup>

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<sup>1</sup>Bell Atlantic Petition, p. 2.

MCI recommends the Commission partially grant Bell Atlantic's petition by permitting a waiver of its price cap rules for the purpose of calculating a PCI and API for the 1996 annual access tariff filing, and to reject all other assertions made by Bell Atlantic. First, the 1996 Act does not invalidate Commission rules requiring a separate video dialtone price cap basket. Second, the Commission intended the price cap rules and regulations adopted in CC Docket 94-1 to apply immediately to the LECs, regardless of the level of demand. The Commission only intended to delay computation of LEC's interstate earnings for purposes of sharing and low-end adjustments until video dialtone costs exceeded a minimum level.

## **II. Impact Of The Telecommunications Act Of 1996**

In support of its first argument, that the 1996 Act has immediately terminated the Commission's video dialtone rules, Bell Atlantic cites the following language:

The Commission's regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87-266 shall cease to be effective on the date of enactment of this Act. This paragraph shall not be construed to require the termination of any video-dialtone system that the Commission has approved before the date of enactment of this Act.<sup>2</sup>

This language does not support Bell Atlantic's contention that the 1996 Act has terminated all video dialtone regulations. The 1996 Act's abrogation of regulations adopted in CC Docket No. 87-266, permits telephone companies to offer video services over their own facilities.<sup>3</sup> This section of the 1996 Act does not mean that regulations adopted in other dockets may not be adopted as part of the Commission's Open Video

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<sup>2</sup>1996 Act at §302(b)(3).

<sup>3</sup> See Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992).

Systems Rulemaking. Moreover, the 1996 Act does not eliminate the rules and regulations the Commission adopted in CC Docket 94-1, which among other things:

1. established a separate video dialtone price cap basket;
2. assigned a zero productivity factor;
3. set the initial price cap index to reflect existing tariffed rates for video dialtone service, and
4. required LECs to segregate video dialtone costs.

These regulations remain valid for approved video dialtone systems such as Dover Township, as long as they remain video dialtone systems, or until the Commission adopts new rules governing open video systems. The quote above makes clear that Congress did not intend to eliminate existing video dialtone systems, nor did it intend to immediately eliminate all Commission regulations governing those systems. The 1996 Act does require the Commission to adopt new rules governing open video systems within 6 months.

However, subject to reduced regulatory burdens for Open Video Systems, the Commission is free to affirm regulation(s) it may have already adopted in CC Docket 94-1, including for example, a separate price cap basket, and segregated video costs as mechanisms for establishing just and reasonable rates for video common carriage services.

### **III. Price Cap Index Calculation**

Bell Atlantic's waiver petition relies on the argument that it is unable to calculate either its 1996 Price Cap Index (PCI) or its 1996 Actual Price Index (API), since its video dialtone service was not available in 1995. MCI concurs. However, if Bell Atlantic continues its video dialtone service, and if the Commission maintains price cap regulation of this service, Bell Atlantic will be able to calculate the PCI and API for its 1997 tariff filing.

#### **IV. Requirement That The Size Of The Video Dialtone Service Offering Exceed A *De Minimis* Threshold Level**

Bell Atlantic also argues that the order mandating a separate price cap basket “is subject to a requirement that the size of the video dialtone service offering exceed a *de minimis* threshold level.”<sup>4</sup> The Commission has not made a separate price cap basket subject to video dialtone service exceeding a *de minimis* threshold level. The threshold level refers only to the computation of LEC’s interstate earnings for purposes of sharing and low-end adjustments. A separate price cap basket could still be relevant for pricing purposes, even if service demand is minimal.

Moreover, the Commission has stated that “*de minimis*” refers to a minimal level of investment, not demand.

Once a LEC’s costs rise above a *de minimis* level, however, we will require the LEC to exclude video dialtone costs and revenues from its interstate rate of return calculations for sharing and the low-end adjustment.<sup>5</sup>

Given the tremendous investments Bell Atlantic has already made in order to make video capacity available to Dover Township subscribers, Bell Atlantic should not assume the Commission may not require it to segregate its video dialtone related costs from its other costs.

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<sup>4</sup>Bell Atlantic Petition, p. 2.

<sup>5</sup> In the Matter of Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation, Second Report and Order and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 11098, 11105.

## **V. Conclusion**

MCI does not object to Bell Atlantic's request that the Commission waive its requirement that Bell Atlantic calculate its Price Cap Index and Actual Price Index for 1996 for the purposes of its annual access tariff filing. MCI recommends the Commission reject all other assertions raised by Bell Atlantic in its petition. First, the 1996 Act does not invalidate rules the Commission has already adopted requiring a separate video dialtone price cap basket. Second, the "de minimis" language does not support an argument that a separate price cap basket for video dialtone service may be delayed. The Commission intended the price cap rules and regulations adopted in CC Docket 94-1 to apply immediately to the LECs. The Commission only intended to delay computation of LEC's interstate earnings for purposes of sharing and low-end adjustments until investments exceeded a minimum level.

Respectfully submitted,  
MCI TELECOMMUNICATIONS CORPORATION

A handwritten signature in black ink, appearing to read "Lawrence Fenster", with a stylized flourish at the end.

Lawrence Fenster  
Senior Regulatory Analyst  
1801 Pennsylvania Ave., N.W.  
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(202) 887-2180

March 1, 1996

**STATEMENT OF VERIFICATION**

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on March 1, 1996.

A handwritten signature in black ink, appearing to read "Lawrence Fenster", written over a horizontal line.

**Lawrence Fenster**  
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(202) 887-2180

## **CERTIFICATE OF SERVICE**

I, Stan Miller, do hereby certify that copies of the foregoing Comments were sent via first class mail, postage paid, to the following on this 1st day of March, 1996.

Edward Shakin  
Bell Atlantic Telephone Companies  
1320 North Court House Road  
Eigth Floor  
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Jim Schlichting \*\*  
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Stan Miller